

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MICHAEL E. BREEDEN,

Petitioner,

v.

//

CIVIL ACTION NO. 1:07CV12
(Judge Keeley)

EVELYN SEIFERT, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On January 1, 2007, pro se petitioner, Michael E. Breeden ("Breedon"), filed a petition pursuant to 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.13.

On March 1, 2007, Magistrate Judge Kaull conducted a preliminary review of the file and determined that summary dismissal was not warranted at that time. The respondent, Warden Evelyn Seifert ("Seifert"), then filed a response to the petition and a motion to dismiss it as untimely. The following day, the Court issued a notice pursuant to Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975), advising Breeden of his right to file a response by May 3, 2007 to Seifert's dispositive motion. No response has been filed.

On November 15, 2007, Magistrate Judge Kaull issued an Opinion and Report and Recommendation recommending that Seifert's motion to

ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION

dismiss be granted, Breeden's motion under § 2254 be denied with prejudice, and the case be dismissed.

The Magistrate Judge recommended granting Seifert's motion on the basis that the Anti-Terrorism and Effective Death Penalty Act of 1996 established a one-year statute of limitation period within which a federal habeas corpus petition must be filed. 28 U.S.C. § 2244(d). As it applies to this case, that one year period began to run on the date that Breeden's conviction and sentence became final. See id. Magistrate Judge Kaull found that Breeden's conviction and sentence became final on January 9, 2003, with the expiration of the 90 day period in which he could have filed a writ of certiorari to the United States Supreme Court appealing the denial of his direct appeal to the West Virginia Supreme Court of Appeals. Magistrate Judge Kaull therefore recommended that, because this petition was filed on January 26, 2007, more than three years after the conviction and sentence became final, the petition is untimely and should be dismissed.

The Report and Recommendation also specifically warned that failure to object to the recommendation would result in the waiver of any appellate rights on this issue. No objections were filed.¹

Therefore, the Court **ADOPTS** the Report and Recommendation in

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION

its entirety. Accordingly, the Court **GRANTS** the respondent's Motion to Dismiss (dkt. no. 11), **DENIES** the § 2254 Petition for a Writ of Habeas Corpus by a Person in State Custody and **ORDERS** Breeden's case **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

The Clerk is directed to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested and to counsel of record.

Dated: December 6, 2007

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE